

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN

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IN RE:

CARRIE DAWSON  
EDWARD DAWSON,

Chapter 13

Debtors

Case No. 08-30286

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JUSTIN ZAVERL  
KIMBERLY ZAVERL,

Plaintiffs,

v.

Case No. \_\_\_\_\_

CARRIE DAWSON  
EDWARD DAWSON,  
Defendants.

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**COMPLAINT**

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The Plaintiffs, by their attorneys, **DEUTCH LAW OFFICES, S.C.**, a division of Deutch & Weiss, LLC, and as and for a complaint against the Defendants, allege as follows:

1. That the court has jurisdiction over this action pursuant to 28 U.S.C. §§1157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. §157 and an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure.
2. That the Plaintiffs are creditors of the Defendants.
3. That the Defendants are debtors in this bankruptcy case, which was commenced on September 20, 2008 by the filing of petition under chapter 13 of the Bankruptcy Code.

4. That on or about August 17, 2006, the Defendants entered into a construction contract with the Plaintiffs for the construction of a new house on Lot 7 in the Preserves in the Town of Richfield, Wisconsin.
5. That the Plaintiffs were using the proceeds of a mortgage on the above described land to pay the Defendants for this improvement (new house) on this land.
6. That money was paid to the Defendants by the Plaintiffs or Plaintiffs' agent from the proceeds of a mortgage and therefore, said money constituted a trust fund in the hands of the Defendants.
7. That the Defendants were fiduciaries of the aforementioned trust funds.
8. That while acting as fiduciaries of the aforementioned trust, the Defendants committed fraud or defalcation by intentionally failing to use said trust fund to pay the claims due and owing a number of subcontractors for their labor and material at the Plaintiffs' house.
9. That as a result of the Defendants' actions, the Plaintiffs have suffered damages and loss.
10. That the Defendants' use of said trust fund at all times material hereto constitutes theft by contractor contrary to Wis. Stats. §§779.02(5), 895.446 and 943.20.
11. That the Plaintiffs sued the Defendants for violations of the aforementioned statutes. *Zaverl v. Dawson, et. al.*, 07 CV 1636, Waukesha County Circuit Court. Plaintiff obtained a judgment against the Defendants in Waukesha County Circuit Court in the amount of \$184,324.41 against the Defendants. That a copy of the Findings of Fact, Conclusion of Law and Order for Judgment for said case is attached as Exhibit A

and incorporated hereto by reference. A copy of that entered judgment is attached as Exhibit B and incorporated hereto by reference.

12. That the entry of a discharge will materially injure and damage the Plaintiffs as the Defendants' personal liability for the outstanding debt would be extinguished.

13. That as of the date that the Defendants filed bankruptcy, the subject matter debt was approximately \$193,040.99. This debt is excepted from discharge pursuant to §523(a)(4) of the Bankruptcy Code.

WHEREFORE, the Plaintiffs seek an order from the court finding that the debt in question is non-dischargeable, that it is specifically excepted from discharge pursuant to §523(a)(4) of the Bankruptcy Code, that the Plaintiff be awarded its legal fees and costs incurred in bringing this action and such and further relief as the court may deem to be just and equitable under the circumstances.

Dated at Fox Point, Wisconsin, this 18<sup>th</sup> day of December 2008.

**DEUTCH LAW OFFICES, S.C.**  
Attorneys for Plaintiffs

By: s/ James L. McAlister  
Alan H. Deutch  
State Bar No. 1013249  
James L. McAlister  
State Bar No. 1023242

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STATE OF WISCONSIN : CIRCUIT COURT :

CLERK OF CIRCUIT COURT  
WAUKESHA CO. WI

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JUSTIN and KIMBERLY ZAVERL  
Plaintiff(s),

vs.

Case No. 07 CV 1636

FILED  
IN CIRCUIT COURT

BAILIEHOMES, LLC  
EDWARD DAWSON, and  
CARRIE DAWSON  
Defendant(s).

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WAUKESHA CO. WI  
CIVIL DIVISION

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FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER FOR  
JUDGMENT

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That the above entitled matter have come before the Court presided over by the Honorable Paul Reilly on the Plaintiffs' Motion for Default Judgment on December 13, 2007, and the Plaintiffs, Justin and Kimberly Zaverl, having appeared by their counsel, DEUTCH & WEISS, LLC, by James L. McAlister and Edward Dawson appearing in person. Based on the record, the Court makes the following:

FINDINGS OF FACTS

1. That all of the Defendants were served with the Amended Summons and Amended Complaint in this matter.
2. That Bailie Homes, LLC c/o Edward J. Dawson was personally served on August 10, 2007.
3. That Edward J. Dawson was personally served on August 10, 2007.
4. That Carrie Dawson was personally served on August 10, 2007.



5. That more than forty-five (45) days have elapsed since the service of the Amended Summons and Amended Complaint on the Defendants.

6. That the Defendants have never answered the Amended Complaint.

7. That the Plaintiffs were using the proceeds of a construction mortgage to pay the Defendants for an improvement (a new house) on land.

8. That money was paid to the Defendants by the Plaintiffs' agents.

9. That the Defendants subsequently failed to use said money to pay the claims due and owing a number of subcontractors for their labor and/or materials at the house.

10. That the actual contractual damages suffered by the Plaintiffs are \$21,141.000.

11. That the actual consequential damages as a result of the breach of contract suffered by the Plaintiffs are \$5,957.00.

12. That as a result of the Defendants' intentional conduct (theft by contractor), the Plaintiffs suffered actual damages or loss in the amount of \$23,193.47.

13. That the Plaintiffs reasonably incurred \$7,073.00 in costs of investigation and litigation of this action against the Defendants.

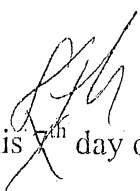
14. The Court has reviewed the parties' submittals post December 13, 2007.

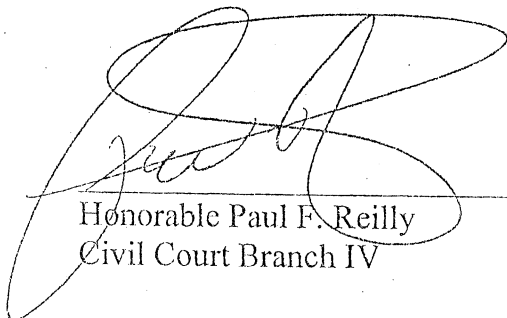
## CONCLUSIONS OF LAW

1. That the Defendants are now in default for failing to answer the Amended Summons and Amended Complaint in accordance with the Wisconsin Statutes and Wisconsin law.
2. That the Defendant, Bailie Homes, LLC, breached the contract it had with the Plaintiffs.
3. That the Defendant, Bailie Homes, LLC, breached its implied warranty with the Plaintiffs.
4. That the Defendants received the proceeds of a construction mortgage and therefore, said money constituted a trust in the hands of the Defendants.
5. That the Defendants' use of said trust fund at all times material hereto constituted theft by contractor contrary to Wis. Stats. §779.02(5) and §943.20.
6. That the Defendants' actions were also in violation of Wis. Stats. §895.446 and §943.20.
7. That the Plaintiffs suffered damages or losses by reason of the Defendants' intentional conduct. That the Defendants' conduct was prohibited by Wis. Stats. §943.20.
8. That as a result of the Defendants' intentional conduct, and pursuant to Wis. Stats. §895.446, the Plaintiffs shall recover:
  - a.) \$21,141.00 + \$80,125 (money drawn but not paid to subcontractors) + \$5,957.00 = \$107,223.00. (Ex. L.)
  - b.) \$7,073.00 (Ex. L.)
  - c. \$69,580.41 (3 x \$23,193.47) (Ex. L.)

ORDER FOR JUDGMENT

Plaintiffs shall have judgment in the amount of \$183,886.41 plus statutory costs and interest.

  
Dated this 7<sup>th</sup> day of February, 2008.

  
Honorable Paul F. Reilly  
Civil Court Branch IV

FILED  
IN CIRCUIT COURT

FEB 11 2008

WAUKESHA CO. WI  
CIVIL DIVISION

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

JUSTIN and KIMBERLY ZAVERL,  
Plaintiffs,

vs.

BAILIE HOMES, LLC,  
EDWARD DAWSON, and  
CARRIE DAWSON,  
Defendants.

Case No. 07-CV-1636

**FILED**  
**IN CIRCUIT COURT**

**FEB 15 2008**

**WAUKESHA CO. WIS.**  
**CIVIL DIVISION**

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**JUDGMENT**

That the above entitled matter having come before the Court presided over by the Honorable Paul Reilly on the Plaintiffs' motion for Default Judgment on December 13, 2007; and the Plaintiffs, Justin and Kimberly Zaverl, having appeared by their counsel, DEUTCH & WEISS, LLC, by James L. McAlister, and the Defendant, EDWARD DAWSON, having appeared in person; and the Court granted Plaintiffs' motion for Default Judgment; and pursuant to the Findings of Fact, Conclusions of Law and Order for Judgment file-stamped February 11, 2008; now therefore,

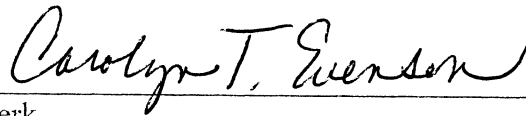
IT IS HEREBY ADJUDGED AND DECREED that the Plaintiffs, Justin and Kimberly Zaverl, whose address is 371 Preserve Way, Colgate, Wisconsin 53017, do have and recover of the Defendants, all of N72 W28922 Fisher Landing, Hartland, Wisconsin 53029, jointly and severally, damages as described in the Findings of Fact, Conclusions of Law and Order for Judgment file-stamped February 11, 2008 in the sum of \$183,886.41, plus statutory costs in the sum of \$ 438.00, altogether in the sum of \$ 184,324.41 plus





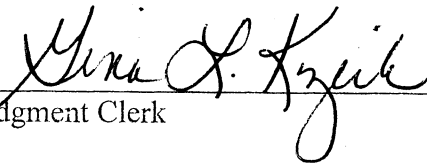
interest after the date of judgment accruing at a rate of twelve percent (12%) per annum as provided by law.

Dated this 15 day of February 2008.



Clerk

Case No. 07-CV-1636



Judgment Clerk